

UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK

CHI KONG LEUNG on behalf of himself and)
all others similarly situated,)
)
Plaintiff ,) INDEX NO: 07 CIV 8779 (RJS)
)
v.) **JUDGE: HON. RICHARD J.**
) **SULLIVAN**
)
HOME BOY RESTAURANT INC. d/b/a)
TRIBECA GRILL and DREW NIEPORENT,)
)
Defendants.)
)
)
)
)

**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, an action entitled CHI KONG LEUNG on behalf of himself and all others similarly situated v. HOME BOY RESTAURANT INC. d/b/a TRIBECA GRILL and DREW NIEPORENT, Civil Action No. 07 CIV 8779 (RJS) (the “Wage Action”) is currently pending before this court;

WHEREAS, Plaintiffs have made application, pursuant to Rule 23 (e), Fed. R. Civ. P., for an order approving the settlement of the claims alleged in the Lawsuit, in accordance with a Joint Stipulation of Settlement and Release (“Agreement”) dated September 5, 2008 (the “Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Wage Action against Defendants and for dismissal of the Wage Action against Defendants with prejudice upon

the terms and conditions set forth therein, and the Court has read and considered the Agreement and the exhibits thereto; and,

WHEREAS, all terms contained and not otherwise defined herein shall have the same meanings set forth in the Agreement.

IT IS ON THIS ____ DAY OF _____, 2008 HEREBY ORDERED AS FOLLOWS:

1. The Court hereby preliminarily approves the settlement set forth in the Agreement as being fair, just, reasonable and in the best interests of the Settlement Class as described in the Agreement (hereinafter the "Class").

2. The Court hereby preliminarily certifies the Class and finds that for purposes of the proposed settlement, the FLSA group is similarly situated, subject to the entry of the Final Order and Judgment as provided in the Agreement. For the purposes of settlement the Court further finds that and that the State Settlement Class meets the requirements for class certification under Federal Rule of Civil Procedure 23, subject to the entry of the Final Order and Judgment as provided in the Agreement.

3. The Court hereby preliminarily certifies Class Counsel, and Chi Kong Leung as Class Representative as described in the Agreement, subject to the entry of the Final Order and Judgment as provided in the Agreement.

4. The Settlement Hearing Shall be held before this Court, on _____, 2008 (at least 70 days after the entry of this Order) at the United States District Court, Southern District of New York, U.S. Courthouse, 500 Pearl Street, at _____, New York, NY 10007, to determine whether the proposed settlement of the Wage Action on the terms and conditions provided for in the Agreement is fair, just, reasonable, adequate and in the best interests of the Class, and should be approved by the

Court; whether an Order and Final Judgment of Dismissal, as provided in the Agreement, should be entered; and to determine the amount of attorneys' fees, costs and expenses that should be awarded Class Counsel.

5. The Court approves, as to form and content, the Settlement Notice and finds that the mailing and distribution of the Settlement Notice substantially in the manner and form set forth in the Agreement constitutes the best notice practicable under the circumstances, and constitutes valid, due and sufficient notice to all persons in the Class, complying fully with the requirement of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States and any other applicable laws.

6. Within twenty (20) days after this Order is preliminarily approved, Class Counsel shall send the Class Notice and Consent to Join Forms to the Settlement Class members by mail to the Settlement Class members' addresses as they are maintained by the Defendants.

7. Settlement Class members shall have a deadline of 45 days after the mailing of Class Notice and Claims Forms for opting out of, or excluding oneself from, the state claim class action under Federal Rule of Civil Procedure 23.

8. Settlement Class members shall have a deadline of 45 days after the mailing of the Class Notice and Claims Forms for objecting to the terms of the settlement Agreement.

9. Settlement Class members shall have a deadline of 45 days after the mailing of the Class Notice and Claims Forms for opting in to the FLSA collective action, and filing a Consent to Join Form in this action.

10. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the Class Members, and retains jurisdiction to consider all further

applications arising out of or connected with the proposed settlement. Notice of any adjournment can be obtained from Class Counsel: D. Maimon Kirschenbaum, Esq., 757 Third Avenue, Suite 2500, New York, NY 10017 (phone: 212-688-5640). The Court may approve the settlement, with such modifications as may be agreed to by the settling parties, if appropriate, without further notice to the Class.

United States District Judge

Dated: _____, 2008